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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,432	11/21/2003	Spiros Jamas	2732.1016-029	5697

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EXAMINER
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KRASS, FREDERICK F

ART UNIT	PAPER NUMBER
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1614

MAIL DATE	DELIVERY MODE
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05/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/719,432	<b>Applicant(s)</b> JAMAS ET AL.	
	<b>Examiner</b> Frederick Krass	<b>Art Unit</b> 1614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3 and 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Previous Rejections**

Unless specifically maintained/repeated infra, all previous rejections are withdrawn.

### **Written Description Rejection**

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

#### **1. "New Matter"**

No support is seen in the specification as originally filed for reciting higher binding affinities "than other glucan receptor ligands". While the disclosure may arguably support higher binding affinities than certain specified ligands, e.g., single helix B-glucan as argued by Applicant (Remarks, page 3, paragraph 4), it does not appear to provide support for reciting higher affinities than all other such species, as the current claim language does.

2. Inadequate Description

The appearance of mere indistinct words (here the phrase “other glucan receptor ligands”) in a specification or a claim, even an original claim, does not necessarily satisfy the written description requirement. The disclosure must allow one skilled in the art to visualize or recognize the identity of the subject matter purportedly described. Univ. of Rochester v. G.D. Searle, 69 USPQ2d 1886, 1892 (CAFC 2004). A description of what a material does, rather than of what it is, usually does not suffice to provide an adequate written description of the invention. Univ. of Cal. v. Eli Lilly, 119 F.3d 1559, 1568 (Fed. Cir. 1997). Furthermore, to the extent that a functional description can meet the requirement for an adequate written description, it can do so only in accordance with PTO guidelines stating that the requirement can be met by disclosing “sufficiently detailed, relevant identifying characteristics,” including “functional characteristics when coupled with a known or disclosed correlation between function and structure.” Univ. of Rochester v. G.D. Searle, 68 USPQ2d 1424, 1432 (DC WNY 2003). No such correlation has been disclosed here; the recitation of “other glucan receptor ligands” is merely a “wish or plan” that species other than those specified, e.g., single helix B-glucan, might be found.

### **Scope of Enablement Rejection**

Claims 1, 2 and 4 were rejected under 35 U.S.C. 112, first paragraph, as being broader in scope than their enabling disclosure.

This rejection is maintained.

The examiner maintains his position insofar as the instant claims still read on the enhancement of “killing activity” and “mobilization” of immune cells in a very general fashion, without specifying any specific physiological and/or therapeutic context.

In order to obviate this ground of rejection, the examiner recommends adopting a more specific version of the language set forth at page 5, lines 8-10 of the instant specification. An example would be:

An underivatized, aqueous soluble B-glucan in triple helix conformation, which has a higher affinity for glucan receptors on monocytes than underivatized B-glucan in single helix conformation, but which does not induce the production of IL-1 and TNF by mononuclear cells *in vitro* or *in vivo*.

**Nonstatutory (Obviousness-Type) Double Patenting Rejection**

Claims 1-4 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over each of USP 6,369,216; 5,811,542; 5,783,596; 5,322,841 and copending application number 11/333,765.

A terminal disclaimer has been filed over USP 5,783,569, obviating that ground of rejection.

The remaining rejections are maintained.

Applicant traverses the rejections over the '216 patent and the '765 application because the claims therein are drawn to aggregates. This is not persuasive. Since the prior art products are made by the same methods as those recited instantly one would reasonably expect aggregate formation to occur inherently, absent evidence to the contrary.

Applicant traverses the rejection over the '841 patent because the claims are drawn to methods for producing purified neutral aqueous soluble (1,3-glucan). This is not persuasive. There is no prohibition against this rejection since the method claims were not restricted from the product claims, insofar as the examiner can determine. (And, in any event, it is generally obvious to prepare pure products from impure products, where both are to be used for the same ultimate utility).

**Action is Final, Necessitated by Amendment**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

**Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick Krass whose telephone number is (571) 272-0580. The examiner can normally be reached at (571) 272-0580 on Monday through Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass  
Primary Examiner  
Art Unit 1614

